

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF )  
 )  
 J. E. ) Case No. OAH-08-0204-CSS  
 ) CSSD Case No. 001097727

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**DECISION & ORDER**

**I. Introduction**

The obligor, J. E., appeals a Decision on Nondisclosure of Identifying Information issued by the Child Support Services Division (CSSD) on March 26, 2008. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on May 15, 2008. Mr. E. appeared by telephone, as did the custodian of record, R. E.. Andrew Rawls represented CSSD. The children are C. E. (DOB 00/00/98) and L. E. (DOB 00/00/03). Under the circumstances of this case, CSSD's decision should be affirmed.

**II. Facts**

Mr. E. has not had contact with Ms. E. and the children since 2004. A dissolution of the parties' marriage was entered on August 11, 2004. On January 10, 2005, Mr. E. entered a no contest plea to a charge of harassment that had been filed on March 12, 2004. In 2003, a court granted Ms. E. a domestic violence restraining order against Mr. E.. At some point, an order had been entered prohibiting Mr. E. from having contact with Ms. E.'s son from a different relationship.

At the hearing, Ms. E. testified that she was not necessarily opposed to Mr. E. having telephone contact with the children, but only after the parties had discussed the matter among themselves. Ms. E. testified that the day of the hearing was the first time she had become aware that Mr. E. had been seeking contact with her and the children, and she wanted to discuss the matter with him before allowing him to contact the children.<sup>1</sup> Ms. E. provided her cell phone number to Mr. E. at the hearing, Mr. E. provided his number to her, and the parties agreed to contact each other and discuss the matter after the hearing. Although it does not normally do so, CSSD volunteered to forward a letter or mailed item from Mr. E. to Ms. E..

**III. Discussion**

AS 25.25.312 provides:

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<sup>1</sup> For unknown reasons, Ms. E. had not received the mailed notice of the hearing or CSSD's pre-hearing brief and exhibits. CSSD stated that it would call Ms. E. after the hearing to verify contact information and forward copies of all hearing documents.

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

CSSD's decision states:

Based on my review of the evidence, my decision is as follows: I have spoken with R., and it is not in the best interest of your children, at this time, to release this information. Please be aware that when your children become 18 years of age, they can make their own decisions, as to whether they wish to have contact with you. Many times, children decide to do this.

CSSD applied an incorrect standard in its decision. CSSD does not have the authority to make determinations regarding the best interests of children. CSSD's authority is limited to determining whether the health, safety, or liberty of a party or child would be unreasonably put at risk by disclosure of identifying information. Absent such risk, CSSD does not have the authority to make decisions usurping the rights of parents to have contact with their children, or to determine what is in their children's best interests. When parents cannot agree on the best interests of the child, authority to intervene rests with the superior court, not the child support agency.

Mr. E. has not had contact with the children and Ms. E. for some time, and the evidence does not suggest that he is a serious threat to anyone's liberty or that he is likely to immediately harm anyone. The fact that there have been domestic violence problems in the past, and that a lengthy period with no contact at all has passed, does raise concerns about a possible risk to the children's health and safety.

While the threat to health and safety is certainly not as great in this case as in many others, determining whether the children's health and safety would unreasonably be put at risk must be measured by weighing the risk against the other parent's interest in having contact with his or her children. In this case, Ms. E. has provided her cell phone number to Mr. E., and agreed to talk with him about the children's current situations and to permit contact with the children after discussing the matter privately with Mr. E.. Thus, Mr. E. now has an avenue to reestablish contact with his children, and to work together with Ms. E. to ensure that all of the children's interests are taken care of.

#### **IV. Conclusion**

Under the circumstances of this case, the need for CSSD to disclose Ms. E.'s physical location is slight, and it is outweighed by even the relatively mild risk to the children's health and safety that would be posed by disclosure. Because the parties have reestablished telephone contact and are now working together to accommodate Mr. E.'s desire for contact while also protecting the wellbeing of the children, the risk posed by disclosure of identifying information would be unreasonable. In order to allow the parties to amicably resolve the matter themselves, CSSD's decision shall be AFFIRMED.

DATED this 22<sup>nd</sup> day of May, 2008.

By: Signed \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notices, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 17<sup>th</sup> day of June, 2008.

By: Signed \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

[This document has been modified to conform to technical standards for publication.]